

REMARKS

Claims 1-7 and 11-12 are now pending in the application and claims 8-10 have been cancelled, but the Applicant reserves the right to pursue these in a continuing Application. Claims 1-12 have been rejected. The drawings have been objected to.

The drawings are objected to as failing to comply with 37 CFR 1.84(p) (5) because they include reference characters that are not mentioned in the description. The specification has been amended accordingly.

The drawings are also objected to as failing to comply with 37 CFR 1.84(p) (5) because they did not include reference character 354. A replacement drawing sheet is included. FIG. 2C has been amended to make reference to reference character 354.

Claims 8-10 are rejected under 35 USC 102 (a) as being anticipated by Porcelli et al. Claims 8-10 have been canceled. Therefore, it is requested that the rejection be withdrawn.

Claims 1-7 and 11-12 are rejected under 35 USC 103(a) as being unpatentable over Porcelli et al. in view of Cellier. Applicant traverses the rejection.

The Examiner admits that Porcelli does not specifically teach a second group of satellites being in common orbits having a same, second and repeating ground track that is different than the first same, second and repeating ground track, and communicating with a second group of land masses. It is asserted that Cellier teaches this limitation, and that the combination renders claims 1-7 and 11-12 obvious.

The Examiner has failed to make a *prima facie* case for obviousness of claims 1-7 and 11-12. To make a *prima facie* obviousness case, the Examiner must show that the prior art references, when combined, teach all of the claimed limitations, that there is some motivation to combine the references or make the proposed modification, and that there is some expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986). Here, it is clear that each and every element of the claimed satellite system is not found in the cited references either alone, or in combination, and that there is no motivation for the combination.

Claims 1-7 and 11-12 all teach a satellite system that includes a first and second group of satellites being in common orbits having the same, first, repeating ground tracks that are different. Neither Porcelli nor Cellier, alone or in combination, teach this

limitation. Porcelli fails to teach a second group of satellites, while the satellite groups taught by Cellier fail to have different ground tracks. The ground tracks of the first and second groups of satellites in the Cellier satellite system have the same ground tracks.

Collier teaches a system of inclined geosynchronous satellite orbits that have a service area defined on a surface of the earth. The service area has elevation angles greater than a predetermined minimum elevation angle from the horizon. The satellites have a consecutive, operating, inclined orbit with respect to the earth having a sky track when viewed from within said service area. Abstract. The inclination angle and phasing are chosen so that the satellite placed in the orbit substantially traces the same ground track as the satellite in the orbit. The satellites are positioned so that as one satellite is leaving a service area, the other satellite is entering the service area. In this manner, continuous coverage may be provided to a particular service area. As such, each and every element of Claims 1-7 and 11-12 is not disclosed by the cited references, even when in combination.

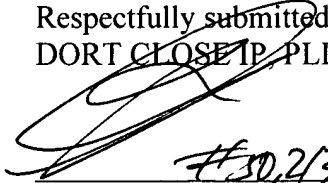
In addition, the Examiner has failed to put forth any motivation to make the modification taught in the claims. “[T]here must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant’s disclosure.” *In re Dow Chemical Company v. American Cyanamid Company*, 837 F.2d 469, 473 (Fed. Cir. 1988). Here, there is no motivation to combine the references, even if the combination would have taught all of the claim limitations.

Further, the Examiner has failed to cite any expectation for success of the modification. There is no reason for one skilled in the art to believe that the satellites taught by Porcelli could be altered to meet the limitations of the rejected claims because there is no way to know if the inclined satellite systems of Cellier or Porcelli could be so modified. There is no suggestion in the references themselves, or in the public arena. What the Examiner asserts is merely obviousness to try, which is not the standard. Applicant’s specification cannot be the basis for the motivation; hindsight reconstruction is not a valid tool for preparing a *prima facie* obviousness case. *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999). “The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984).

Since the Examiner has failed to offer a valid *prima facie* obviousness case, it is submitted that Claims 1-7 and 11-12 are obvious over Porcelli and Cellier. Therefore, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

Applicant believes that the arguments asserted and the amendments presented herein place all of the pending claims in condition for allowance.

Respectfully submitted,
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